

HIS
MAJESTIES
ANSWER

TO THE
DECLARATION
OF BOTH HOUSES OF
PARLIAMENT.

Concerning the Commission of
ARRAY

Of the 1. of July. 1642.



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HIS
MAIESTIES ANSWER,
to the DECLARATION of both
Houses of Parliament, concerning
the Commission of *ARRAY*.

HAVING first received, by the published Votes and Declarations of both Our Houses of Parliament, severall informations of evident and imminent danger unto Our Kingdome, *from enemies abroad, and at home,* and finding that Our Commissions of Lieutenancie (although Wee did since the beginning of this Parliament grant the like for the County of *Yorke,* to the now Earle of *Essex,* with the privitie of both Our Houses of Parliament, and without exception from either; and that the same was the meanes for defence of this Kingdome used

in the happy times of that good Queene *Elizabeth*, and Our blessed Father, and confirmed as well by the opinions of Iudges and Lawyers, as the universall obedience of the Subjects) were all of them, without hearing any of Our Councell learned, voted illegall, and by Our House of Peeres called in to be cancelled: And that thereupon Our Kingdome lay open and exposed to all dangerous attempts without other provision then of a late pretended Ordinance of both Our said Houses; which (being made without Vs, and contrary to Our expresse will declared, and after it had beene twice refused in Our House of Peeres, and after the departure of a major part of the Peeres) was so farre from being a meanes to prevent danger, that if it should have beene admitted, it would in all probabilitie, have beene the ready way to confusion, and ruine, as being made in an unparliamentary, unpresidented, and unjustifiable way, and therefore of a most dangerous consequence, both to Vs and Our people, as well in that particular, as in the Example.

Wee did therefore for the avoyding of the perill of delayes, and expence of time in disputes, issue forth such Our severall Commissions of Array into Our severall Counties, as upon great advice, Wee conceive were not only secured for, but also

also might well be most satisfactory unto both Our Houses, as being beyond all just exception in the point of Legality, Danger, or Inconvenience, the same having beene heretofore most deliberately agreed upon, and settled (as Wee shall herein shew) in, and by the care and wisdom of the Parliament, held in the fifth yeare of King Henry the fourth.

And Wee expected for this Our so Princely care of Our People, and observance of Our Lawes, rather the dutifull thanks of both Our Houses, then the returne of such an Answer or Declaration as causelessly imputes to this Our so well intended and justifiable an act, not onely (upon misconstruction and mis-application of severall Acts and Declarations in Parliament) the taxe of illegality, but also marketh it (upon the mis-representation of divers powers, and omission of divers Limitations in Our Commission) with the brand of extreame danger, and inconvenience thereby to Our people, and of an heavier yoke of Bondage then either that of the late Ship-money, or any other charge taken away this Parliament.

In all which, for the better and further satisfaction of Our well-affected people, and to save them (if possible) from incurring any danger either by obeying that Ordinance, or disobeying
Our

Our Commissions, (in both which We are resolved to require a strict examination and account) We have taken the pains to examine the said Declaration, and the Objections therein against Our Commissions.

And for the better understanding of the severall particular doubts which are now raised thereupon, We hold it necessary in the first place, to set forth the true end of these Commissions, with the severall Powers and Limitations thereof, which by this Declaration are drawne into question, together with the severall mis-representations thereof in this Declaration.

The Subjects being of three sorts; Some having good estates, and able bodies; Others, being of good estates, but impotent; Others, able of body, but not in estate: And the service required, being for the necessary defence of our Kingdom in generall, in the time of danger.

The Commissioners are to cause those of the first sort, to Arme themselves according to their degree and estate, (and serving in Person, they are not bound by this Commission to find Arms for any others.)

Those who (having estates) are not able to serve in Person, are to be assessed, and may be distained to finde Arms for others, according to the
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the quantity of their Lands and Goods; But with this Limitation, *prout rationabiliter portare poterunt, & salvo statu suo*; that is, That they be charged but moderately, and so as they may live still, according to their former condition.

As for those of the third sort, who are not able to Arm themselves, by this Commission, as it was altered by common consent in 5.H.4. (for it was otherwise before that time) they are not (as to this matter of Arming) meddled withall.

And therefore this part of the Commission is mis-represented in the Declaration; Which supposeth a Power given by this Commission, to charge all men *without distinction*, with Arms, at the discretion of the Commissioners, *without Limitation*; and those that are able, *to finde Arms*; and such as are impotent, *to finde men at Arms*, according to the quantity of their Lands and Goods; And also wholly omits the manner of the charging them, which is *to be moderately, and so as they may still live, according to their former condition*.

The Commission having thus, with equality, and indifferency, charged Our Subjects with provision of Arms, it further provides for their calling together, training, and exercising, not (as it is in the Declaration) generally at the pleasure of the
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the Commissioners, without restraint either of time or place :) But that they shall be called together, *ad certos dies & loca quos videritis magis convenientes & expedientes, & pro populo nostro minus damnosos.* At such times and places as the Commissioners shall thinke to be most fitting and expedient, and least hurtfull unto the people.

And having thus provided, for the Arming and preparing Our Subjects for defence of the Kingdome; In the ~~next~~ place, the Commission gives power to the Commissioners, to lead them to the Sea-coast, or else where; but not at the pleasure of the Commissioners, (as may be inferred out of the Declaration) nor without Limitation; (though omitted also in the Declaration) But the Commission provides, That they are to be led to the Sea-coast, or else where; *ubi ac quoties necesse fuerit ad inimicos nostros expellend. debellend. & destruend. cum periculum imminet.* At such times and places as it shall be necessary for the expulsion, vanquishing, and destruction of Our Enemies, when there shall be imminent danger. And it further provides, in another part of the Commission, That they shall be conducted, *cum periculum imminuerit in defensione Regni & Patriæ tam ad Costerum Maris, quam alia loca ubi magis necesse fuerit.* In case of imminent danger, for defence

fence of the Kingdome and Countrey from time to time, as well to the Sea-coast, as other places where it shall be most necessary.

And although notwithstanding all these limitations and cautions, it be true, That in this charging of Arms, as also for the times and places of calling together Our Subjects, and of conducting or leading them, and the dangers upon which they are to be so conducted and led, much is left to the discretion of the Commissioners (as it must of necessity in all Commissions, where the places, times, and occasions of execution of them depend upon future accidents and circumstances, and cannot be certainly knowne, or described at the time of the issuing of the Commissions.) Yet neverthelesse it cannot be inferred thereupon, That therefore Our Commissioners have a meere absolute arbitrary Liberty of Will to doe what they please; But that if they shall wilfully and unjustly grieve any of Our good Subjects, in exceeding or not observing Our Limitations or Directions, they are, by Law, clearly punishable by Indictment for the same: Nor are, or shall any of Our Subjects so grieved, be without remedy or reliefe.

And to the end that every Country, so farre as in Vs lyeth, should have cause to rest the more as-

fired against any evill usage and abuse; By this Commission Wee have appointed for Commissioners, such as have estates in the severall Countreys, and are Persons of Honour and Reputation, who are not onely engaged to all fairnesse out of their owne interest, but also in the concernment of their Posterity, Kindred, Alliance, Friends, and Tenants, and the good affection of their Countrey, which to Persons of such Condition as they are, is of a consideration beyond their Fortunes; So that Wee hope their forwardnesse in undertaking this trouble for the publike defence, will occasion in Our good Subjects, rather a willing obedience unto Vs, then the least distrust or jealousie of any of them.

Having thus stated the substance of Our Commission, and prevented that mis-understanding, which this Declaration might have else begotten thereupon; Wee (in the necessary justification thereof, and vindication of Our owne Honour, against those expressions in that Declaration, which so nearely doe concerne Vs (under the Common name of Evill Councillors.) as if Wee had violated Our Lawes, even those so lately made; broken Our often Protestations of governing according to Law, and done that which would bring Our people into a slavery) shall

now

now joyne issue with Our two Houses, in every materiall part of their Declaration, both in the consideration of the pretended Danger, Inconveniency, and Illegality.

And herein, first, for the pretended Danger, and Inconveniency so much urged, Wee do deny.

That this Commission is full of Danger, or Inconveniency to Our Subjects, or will bring an heavier Yoke of Bondage then the Ship-money, or any other illegall charge, taken away this Parliament; or indeed, any Danger or Inconvenience at all.

And therein Wee appeale to each good mans conscience and reasonable understanding: In a Kingdome (as this is) which in its fundamentall policy (as well for its owne assurance, against the danger of Forraigne Aids, as the bad use that might bee made of great constant Forces (whether forraigne or native) must necessarily be defended by it selfe: What other way of defence can be imagined but by the Subject? What more reasonable proportion of charging them can bee found? Wherein can the Limitation of the (otherwise Arbitrary) Discretion be bettered? Or how, in any one particular, can a more equall & fitting way be taken for the avoyding the grieving Our good Subjects in their own particulars? Yet with all providing for the defence of our Kingdome

in the generall, then is by this Commission?

And Wee cannot but professe Our Wonder, That since (as Wee shall shew) this very Commission was with so much care, both in respect of the Commissioners, and the powers of execution thereof, over the persons to be commanded, allowed, and setled in all points, to the very desires of the people (and that in Parliament) in the fifth yeare of King H. 4. how such Danger, Inconvenience, and Bondage, can be by Our two Houses imagined in this Act of Ours, without violating that rule, so often urged by them (though not so properly applyed to them without Vs) That a dishonourable thing ought not to bee imagined of the Parliament. And it is as strange to Vs, that all this should happen by this Commission, and yet that Our Subjects should, for so many yeares past, have enjoyed so many happy dayes in the reigne of Queene Elizabeth, and Our Father, both of blessed memory, under the provision of *Lieutenancy*, which is agreed by this Declaration to be little differing from those of the Commissions of Array in the Powers.

And lastly, Wee demand, Whether the persons appointed over the *Militia* by Our Houses of Parliament, have not, by their pretended Ordinance or Orders, most of those powers, nay, some greater

ter over the Subject, in this matter of the *Militia*, then are in this Commission? and how they themselves can imagine these powers to be of a better nature by their authority, then they are by Ours?

And as to this tax of danger and inconvenience, as in the generall it did require no answer at all, (though for the satisfaction of Our people, Wee have therein thus enlarged Our selves) so for that particular of the Yoke of Bondage thereby, in making it heavier then that of Ship-money, since they have not shewed in what particulars, Wee shall say no more but this: That by this Commission *no money* at all comes to Vs, or to Our dispose; nor is any money appointed to be raised; but onely *Arms provided*: And the *Arms* which Our Subjects are charged to *beare* or *finde*, are to bee their *owne* proper goods (which Sir *Richard Hutton*, in his Argument in print against the Ship-money, well observed, and thereby differenced the providing of Arms, and payment of Ship-money) and are provided *once* for all, and not yearly to be renewed, as taxes for money might bee, and remaine in their *owne custody*, and for their *owne* defence as well as Ours.

Wee shall now proceed unto the next generall issue, touching the pretended illegality of Our Commission of Array, and shall justify the legality

ity thereof by *Common Law*, and by the *practise* of former Ages conforme to it; and by *Statutes* in the very point against all the severall pretences mentioned in the Declaration, whereunto Wee shall give particular Answers.

And Wee shall first begin with the *Common Law*, whereunto the Declaration saith, this Commission is contrary; and therein affirme,

That this Our Commission is warranted by the very fundamentals of Our Government, and (as VVee said in Our late Proclamation) the right of issuing thereof is inherant in Our Crowne.

For since (as Wee hope none will deny) the Kingdome must of necessity be ever in readinesse (in time of danger at least) by power of Arms to prevent or suppress Rebellion at home, and Invasion from abroad; and to that end the Subject must be armed and prepared before hand, and conducted after, as there shall be occasion: And that this cannot be done without a Command or Government, Wee desire much to know in whom, out of Parliament, (for Parliaments are not alwayes, nor can bee called at all times, or meet on the suddaine) this power can be but in Vs as the Supream Governour; (as it is in all other States, be the persons of the Governours one or more, according to the forme of each State)

And

And can the Supreamie Governour, according to his duty, and Our Selfe more particularly, according to Our Oath, otherwise afford Our people that protection which is due unto them, in maintaining to them the Lawes in the matter of Property and Liberty against private injury or oppression, As well as Our Selfe, and them, and whatsoever is deare unto any of Vs, against Enemies or Rebels, especially the just Rights and Prerogatives of Our Crowne, wherewith God hath trusted Vs, (according to the fundamentall and well-established policy of Our State) as well for the peoples good as Our owne honour, both which must bee preserved; And will any man say, that by calling of Our Parliament, (which is but a meeting of Vs and Our Subjects, (and such they continue as well collectively in the two Houses, as they were before singly) and a meeting in its owne nature dissolvable at Our pleasure; and though now enlarged by Vs in time, yet not in power) Wee are growne lesse, or departed with any thing to them either by way of abdication, or communication of Our Royall Power? This upon the common principles of Reason and Government is so obvious to every man, that Wee shall for the present proceed no further therein, either by quotations of Acts of Parlia-

Parliament, or other legall authorities, (some whereof Wee have recited in Our late Proclamations) till Our two Houses shall give Vs some justifiable instance of some good time to the contrary.

Wee come next to the continuall practice by Vs alleadged (being alone sufficient to declare an originall fundamentall Law of Our Kingdome, or at least by a tacite consent to introduce a Law) and to this purpose Wee shall shew that the power of granting *Commissions for the defence of the Kingdome* in the generall, whereunto onely Wee applied and doe apply the opinions of Sir *Richard Hutton* and Sir *George Crook* (not meaning therein, as neither in Our Proclamation (as is clearely mistaken) the present forme setled by 5.H.4. (which Wee Our selves declared, was made upon alteration) though for the substance thereof Wee might have said so much, and made it good, as it appeares by the Marginall Quotations) is warranted by the presidents in former Ages.

See the
printed
Argu-
ments,
fol. 25.
64, &c.

See 14.
H. 3. in
the prin-
ted Ar-
gument

of Sir *George Crook*: a Commission to the Bishop of *Rocheſter* and others, and to the Sheriffe of *Kent*, to cause all men at Arms in that County to be sworne, and to asseſſe them what Arms they shall finde. And divers other presidents there of Arrays in the times of severall Kings. And see *Cl. 14. H. 3. m. 15. Dorf.* the like to other Counties. And 36 *H. 3.* (as appeares in the History of *Matth. Paris*, who lived at that time, Fol. 864.) *Rex consue-
tuit & generaliter per Angliam voce praconia fecit acclamari missis super
hoc*

hoc brevibus ad singulos Comitatus, ut secundum pristinam Consuetudinem, arma civibus competenter assignarentur, & monstrarentur, & censerentur, ut essent sufficientia & competentia secundum cujuslibet facultates. The King caused Proclamations to be made (for in such cases Proclamations declaratory were not conceived in those times to be illegal) and sent Writs into all Counties of England, That (according to ancient custome) Armes should be competently assessed (or appointed) for the people: And that they should be (musters) or shewed, and inrolled, that they might be sufficient and competent, according to every mans estate. And see Pat. 48. H. 3. m. 3. Dors. & m. 7. Dors. Cl. 23. E. 1. m. 5. Cl. 25. E. 1. m. 17. Dors. in sedul. pendent. Pat. 31. E. 1. m. 20. Cl. 16. E. 2. part. 1. m. 13. Dors. Pat. 18. E. 2. m. 32. and Rot. Vascon. 18. E. 2. m. 4. 10. 27. Cl. 7. E. 3. part. 1. m. 25. Rot. Scot. 10. E. 3. m. 8. Franc. 26. E. 3. m. 5. Cl. 44. E. 3. m. 22. Scot. 7. R. 2. m. 9. Franc. 10. R. 2. m. 24. Pat. 4. H. 4. part. 2. m. 10. Dors. And after the Parl. of 5. H. 4. See Pat. 7. H. 4. part. 2. m. 31. Dors. 11. H. 4. part. 2. m. 24. Dors. Pat. 5. H. 5. part. 2. m. 37. Dors. Pat. 8. H. 5. m. 17. Dors. Pat. 34. H. 6. m. 8. Dors. Pat. 9. E. 4. part. 1. m. 1. Dors. Pat. 12. E. 4. part. 1. m. 13. Dors. And very many more Commissions of Array in the severall reignes of these Princes. See Lamb. fol. 135. A Law of King Edward the Confessor. *Debent enim universi liberi homines, &c. secundum feodum suum, & secundum tenementa sua arma habere, & illa semper prompta conservare ad tuitionem Regni, & servitium Dominorum suorum juxta preceptum Domini Regis explendum & per agendum.* And Libr. Rubr. Scaccarii, fol. 162. the Conquerours Law in these words, *Statuimus & firmiter precipimus, quod omnes Comites, & Barones, & Milites, & Servientes, & universi liberi homines totius Regni nostri pred. habeant, & teneant se semper in armis & equis, ut decet & oportet, &c.* Upon both which it appears, that every man, as well as the Kings Tenants, ought to have Armes according to his Lands, for defence of the Kingdome, at the Kings command. And Hoveden, Pag. 614. in Anno 27. H. 2. *Deinde Henricus Rex Anglia fecit hanc assisam de habendis armis in Angl. &c.* King Henry the second made an assise of Armes for defence of the Kingdome, according to the difference of mens abilities, farre differing from that in 13. E. 1. And see Matth. Paris, fol. 224. A Writ of King John to summon *Omnes liberos homines & servientes, vel quicunque sint, & de quocunque teneant, qui arma habere debeant, vel arma habere possint; quod sint, &c. sine apud Doveram, ad defendendum caput nostrum, &c. sub pena Culvertagii.*

And this practice, the Penner of this Declara-

tion doth indeed not deny; for having before
 confessed the often issuing of Commissions of
 Array, after 5. *H. 4.* in the times of *H. 4. H. 5. and*
H. 6. (and hee might have brought it to later
 times, if hee had so pleased) he doth afterwards
 confesse, that divers Commissions of Array issued
 in divers Kings Reignes before 5. *H. 4.* But as to
 this point of practice before 5. *H. 4.* hee saith by
 way of answer, That for the most part they were
 warranted by particular Acts of Parliament. And
 yet amongst so many presidents of severall Com-
 missions, he gives instances onely of two yeares
 in 13. & 14. *E. 3.* of Commissions of Array then
 issued, warranted by Act of Parliament. Which,
 if true, doth no more disprove the legality of o-
 ther Commissions of Array, constantly issued
 without a Parliament, then it doth of Commis-
 sions of Oyer and Terminer (which at the same
 time in 14. *E. 3.* together with the Commissions
 of Array, were appointed to issue to the same per-
 sons) or of any other Act, which the King doth by
 the advice of his Parliament, though he may do it
 without them: rather it implyeth the legality, and
 the former usage of such Commissions of Array,
 in that it appoints such Commissions to issue, but
 limits not at all the particular Clauses or Powers
 to be inserted therein, as a thing known and usu-
 all to be done.

But

Rot. Par.

23. E. 3.

P. 2. N.

39. Rot.

Parl. 14.

E. 3. P.

1. N. 53.

But the truth is, both the presidents do concerne the drawing of men out of the Kingdome to a forraign Warre; and so are nothing to the purpose Wee have in hand. And that of 13. E. 3. is not at all a Commission of Array, but of another nature, giving power to the Lord Wake, and others to provide moneyes, and to cause certaine persons there named, who had particularly undertaken the service of the *Scottish Warres*, *Leur arraier & appareiller d'aller vers, Newcastle*: To array and prepare themselves to goe to Newcastle: (whether they were to be brought at the charge of the Counties) and to be there at a time appointed.

Having thus set forth the continuall practice of issuing forth Commissions of Array in former ages (whereunto Wee never found, till now, any exception, as for *home-defence*) and the absolute necessity thereof, Wee doubt not but every indifferent Iudgement will easily conceive, That this power is a right Vs by by the Common Law. And the rather, when they shall consider, That a Commission of Array having beene issued by the King in 5. H. 4. The Commons in Parliament, that yeare did not except to any part thereof as *illegall*, no, not to the Clauses, which seemed heavy over the Commissioners; nor did except at all to any the powers of execution thereof over the persons

to be commanded, but did acknowledge the Royall assent, for the amendment, and alteration of that Commission into the now present forme, to be an Act of *great grace*.

And herein Wee cannot but admire, that the Penner of this Declaration should urge it as a reason why the Commons in that Parliament of 5. H. 4. complained not for reliefe against the Commission in the powers of execution over the persons to be commanded, because (as hee supposeth) they knew that they were so clearly against the late Statute of 4. H. 4. Whereas (if it had beene so) they should the rather have complained, because they issued against so late a Statute, so cleare in the point, (unlesse the policy and temper of the times be since much altered) for in a matter of so high a nature as the powers of this Commission, which (as this Declaration confesseth) did surely most concerne them and the Kingdome, They were bound, as well in duty as discretion, to have sought remedy against so great a violation of the Law and Liberty; and the rather at this time, when they thought fit to petition against part of the Commission, since an exception but to a part, especially by him, who ought to complaine against the whole, is a violent presumption of his allowance of the residue.

Wee

Wee come now more particularly, to the examination of this Our Commission, as it stands by Statute-Law, and herein (as in the matter principally insisted upon in the Declaration to be disproved) Wee do affirme, as formerly in Our Proclamation :

That this Our Commission is warranted by Parliament, in 5. H. 4.

And to this purpose, Wee do observe ; that this Declaration doth confesse, That the Record in the Parliament of 5. H. 4. concerning the Commission of Array, is an Act of Parliament ; And that the Question is now onely about the meaning thereof, Whether the Parliament meant thereby, onely to take away *some penall clauses touching the Commissioners* ; (as the Declaration affirms, to which purpose onely it alloweth it for an Act) or else to settle also *the powers of execution thereof, over the persons to be commanded*, as Wee affirme.

And therein (as Wee do agree) that at the first, the Complaint of the Commons, was onely in respect of *some Clauses & wordes therein, which were Greivous, and Dangerous to the Commissioners* : So it cannot be denied, but that afterwards the Copie of the Commission so complained of, was delivered by the King to the Commons, with an expresse Generall Liberty (without any restraint)

to correct it according to their owne mindes, and thereupon the Commons did make use of that further Liberty, and corrected the Copy, in divers materiall *Clauses*, and Words which concerned the powers of *Execution*, as well as those, which concerned the *Commissioners* (though the contrary be strangely affirmed by the Penner of this Declaration) as may appeare more particularly by the clauses following, wholly omitted by him.

1. First, the Copie gives power, *Ad armari faciend. omnes illos qui de corpore sunt potentes & habiles ad armand. tam illos qui de suo proprio habent unde seipsos armare poterunt, quàm illos qui non habent unde seipsos armare poterunt;* To cause to be armed, all those who have of their own thereby to arme themselves, as well as those, who have not where-with of their owne to arme themselves. Which last Clause, concerning the Arming of those, who are able of Body; but not in Estate (being such as are by Vs before reckoned amongst the third sort of Our Subjects) is wholly omitted in this Commission, as it now stands corrected in 5. H. 4.

2. The Copie, as concerning the assessing, and distraining of all those who are able in their Estates, but not in their Bodies, goes therein thus; *Ad inveniend. juxta quantitatem terrarum & bonorum suorum, & prout rationabiliter portare poterunt,*
salvo

*salvo statu suo, armaturas hominibus ad arma, & hominibus armatis, & arcus, & sagittas sagittariis sic arraiatis & triatis, qui non habent armaturas arcus & sagittas de suo proprio, nec unde armaturas, arcus, & sagittas emere & providere poterunt, & ad contri-
buend. expensis omnium illorum qui sic laborabunt pro
defensione dicti Regni nostri, tam infra dictum Com.
nostrum quàm extra, quandocunque indiguerit; Ita
quòd illi qui morabuntur, &c.* For the finding of
Armes, according to the quantity of their Lands
and goods, and as they may reasonably beare, sa-
ving their degree, for men at Armes, and men Ar-
med; and Bowes and Arrowes for Archers so
arrayed; and trained; which have not Arms, Bows
and Arrows of their owne, nor have wherewith
they can buy and provide Arms, Bowes, and Ar-
rowes; and to contribute to the expences of all
those which shall so labour for the defence of
Our said Kingdome, as well within that Our
County as without, whensoever there shall be
need. All which, as may appeare upon the com-
paring, is much beyond that Commission of 5.
H. 4. as it was entred after the correction.

Vpon these proceedings in 5. H. 4. the corre-
cted Copie being presented to the King, with a
Prayer by the Commons; *That from thenceforth
forward, no Commission of Array should issue other-
wise,*

wise, nor in other Words, then was contained in the Copie so corrected, &c. An Act was thereupon made by the Kings Royall assent thereunto, by the advice of the Lords.

And thus upon the whole Record it is cleare, That in the litterall Sence the Commission is fully enacted in the whole; and We do not observe that to be denyed in the Declaration. And the Art of the Penner seems to be spent onely concerning the intent of the Parliament, in labouring to prove, That the Commons meant nothing in the Act, but the taking away the penall clauses and words concerning the Commissioners. And the Argument is drawne onely from the end of the Statute, which the Declaration saith was onely for the security of the Commissioners: And this the Penner goes about to prove: First, from the Complaint, as being no more. Secondly, from their amendment of the Copie, as being onely concerning the Commissioners. Thirdly, from the Prayer, being to the same purpose. Fourthly, out of the occasion, as supposing the Act necessary on the part of the Commissioners, not on the part of the persons to be commanded. Lastly, out of the subsequent practice of issuing Commissions, that there never went out one agreeable with the Copie so corrected.

And

And herein, to justifie this Our sence on this Act of Parliament of 5. H. 4. and withall, to shew the errours and mistakes of the Declaration in frame of the Argument to the contrary, the state of the Case stands thus briefly.

The Commons complained but against the Penall Clauses upon the Commissioners (which Wee agree) at first; but afterwards, the King left them at liberty to correct the whole, as they pleased. And now they alter their minde, and doe not rest in correction of those Penall Clauses upon the Commissioners, according to their first desire, but (as it is plaine upon the compare of the Copie, as it was corrected, with the Commission formerly issued, the not observing whereof was the great mistake, that doubtlesse now misled Our two Houses.) the Commons likewise (as wise men) who would not wave the advantage of a proffered favour from the King, did correct the Commission also in the powers of execution over the persons to be commanded. And thereupon the corrected Copie being presented, and the Commons expecting, that even presently (for there was then occasion) and often afterwards Commissions of Array would (as they did in truth) issue forth, did pray not only for the indemnity of the Commissioners, which had bin indeed

but answerable to the first complaint; But in the first place, they made their Prayer in these Words; *That from thenceforth forward, no Commission of Array should issue otherwise; nor in other words then is contained in the said Copie* (so corrected)

This now being apparently the true state of the whole case (cleared from all mistakes) we think it so plaine, that it requireth no further Argument to manifest, That the intention of the Parliament, was both to settle the Clauses concerning the Powers of execution, and the Clauses concerning the Commissioners. Thus then Wee passe over to the Answer of the Objections.

First then, for the first pretence, That the complaint was solely on the behalfe of the Commissioners, Wee agree it to be true, and perhaps the Commons had no further thought at the beginning, nor till after an occasion given by the offer of the Liberty for a totall reformation: But then they might desire an alteration accordingly.

For the second pretence, (which destroyed, makes an end of the question) That the Commons made no amendment in the Powers of execution over the persons to be commanded; It is apparently mistaken, as appears by the particular instances before mentioned.

For the third pretence of the Prayer, (which
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came not till after the Commission was in all points so as before corrected) That the Commons did not desire any amendment or Declaration concerning the Powers of execution, that is also mistaken; For having made those severall amendments, in the very first place (before any particular desired on the behalfe of the Commissioners) their prayer is as generall, as their amendments, *That from thenceforth forward, No Commission should issue otherwise, nor in other words, then is contained in the said Copie.*

For the fourth pretence, That it was unnecessary to take care of the persons to be commanded, because that the Powers of execution over them were against 1. E. 3. cap. 5. 25. E. 3. cap. 8. and 4. H. 4. cap. 13. and that the Commissions of that kind were then so lately damned in 4. H. 4. Wee Answer, That if it were so, there was the more necessity for them to complaine, as We have shewed before. But in this also, though it be needlesse, We shall herein further cleare Our Commission from those Statutes.

As for the occasion of reliefe for the Commissioners more then for the persons to be commanded, We say, the Commons could not but know that there was no more occasion for the one, then for the other: For the same Law of 4. H. 4. if it

had (as is pretended by the Declaration,) expressly damned the Commission as unlawfull in the Powers, that (without more) had apparently, to every common Iudgement, sufficiently secured the Commissioners against all refusalls; And in truth, the persons to be commanded, being most of them of the lower sort, had more reason to feare the Commissioners, then the Commissioners, being men of Power, had to feare any trouble by Fine or Imprisonment, or otherwise, from any of the Courts above, especially in a time when Parliaments were so frequent.

For the last pretence of contrary practice, Our Answer is: First, We deny this (which the Declaration affirms) That though many Commissions of Array did issue out after 5. H. 4. yet none of them did agree with it in words and matter: For We say, That divers Commissions were the very same, saving in those things which were necessarily, and as of course, to be changed, as (amongst others) may be seene in the after times of King Henry the fourth.

See Pat.
7. H. 4.
part. 2.
m. 31.
Dors.
Pat. 11.
H. 4.
part. 2.
m. 24.
Dors.

And as unto the pretended contrary practice, Wee agree that it is true, Divers Commissions of Array did issue out, which do vary from this Statute of 5. H. 4. yet Wee deny that they must be therefore contrary to it; For (however upon the Com-

Commission of 5 H. 4. as it was corrected in the severall Clauses in such manner as before) it is enacted that from thenceforth forward no Commission should issue out otherwise then is contained in that copie; yet it is most evident notwithstanding, that the meaning of the Law could never be to tye the King to the very words of that copie; For then at all times the Commissions must have begun with *Rex, &c.* and not *Carolus*, or *Regina*, and ended with the same *Teste* for time and place, and just the same *preamble* of danger, be it true or false (whatsoever other occasion had been) must have been meant to be expressed; All which are absurd. And in this, as in all Acts of Parliament, as well as in Wills, the intent clearly and necessarily appearing out of the Act it selfe, is the Law, which in this case was not so much to tye to the very identicall words, as, *That the King should not issue out any Commissions of Array which should exceed this which was so settled by any further penalty on the Commissioners, nor in the powers of execution upon the Persons to be commanded*, which sentence appears in this, that in such a case it could never have been meant, That the Powers of execution of the Commission, being severall, as to Array, Assesse, Arme, Train, Muster, and Conduct, and all these not necessary on all occasions,

nor all alwayes equally fit to be entrusted to the same persons, That the King should be bound at all times unnecessarily to command the execution of them all, and equally to entrust the same persons with them all, as he must have done in case the Act had beene literally to be expounded in each title.

The truth is, many Commissions did vary, yet still were warranted, as not exceeding that of 5. H.4. in the powers. As sometimes granting but part of them, when there was no cause to use all; as also, some varied on the occasion, as sometimes providing against an invasion, in this or that part onely, sometimes more generall throughout the Kingdome: And lastly, it is true that some were upon occasion of rebellion, for which there is as much cause as against a forraign enemy, for those Commissions are not against 5. H. 4. which was a president, onely for the power of execution of Commissions of Array (whatsoever might be the necessary occasion to issue them) And as this particular Commission sent forth in 5. H.4. and thus after corrected, was on the occasion of the feare of the *French*, and therefore was upon that accident made onely as against an Enemy; so if according to former practice the like had then issued in case of Rebellion (in which case perhaps Rebellion had

had beene mentioned as the cause) then the suppression of Rebellion might have beene inserted in this president, and then the Argument might have beene at this day used as well against the warrantablenesse of this Commission in case of Invasion.

And as to the president of the Commission of Array in 6.H.4. cited in the Declaration as not agreeing with that of 5.H. 4. neither in words or matter, We conceive it is in substance warranted by it: For there the King (upon occasion of the French being in Piccardy, ready to besiege some of his Forts there, and hearing that they intended to come to aide the Welch, being then in Rebellion) sends out his Commissions into Kent, Somerset, and other Counties, to Array, Train, and Arme the Inhabitants there, to the end they may be ready, as well at the Sea-coast, as else where; where, and as often as there shall be necessity for the expelling, vanquishing, and destroying of those enemies when there shall be imminent Danger, as in such case had beene accustomed. But he thinks not fit to give to them the power of conducting them (which is the Commission of 5.H.4.)

But shortly after, upon information of an intention of the Welch to enter into England, a Commission issues to Sir Thomas Barkley touching some
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of these Counties and others, not, to Array and Arm the inhabitants, for that was done before, but *ad supervidendum*, to see that they were sufficiently arrayed, according to their estates, and to lead them as often as it should be needfull for resistance of the Rebels.

So that as Wee conceive, the powers which were put together in 5. H. 4. are here severed; but there is nothing in either Commission which exceeds or crosses the powers settled by the Commission of 5. H. 4. Though if it did, it might prove the illegallitie of those; but nothing against the legality of Our Commissions.

And if other particular Commissions had been produced, and the differences particularly observed, Wee should have beene the better able to have applyed Our answer thereunto; And in the meane time, Wee looke upon all such Commissions, as regulated, and warranted by this Act of 5. H. 4. and in pursuance thereof.

Notwithstanding, if some Commissions can be produced, which are not warranted by 5. H. 4. Yet that will be no sufficient Argument to prove, That this of 5. H. 4. never meant to settle the Powers of Execution; for there is no doubt, but in so long a proesse of time, as since 5. H. 4. there may have beene some deviation contrary unto the Act,

Act, the same having not at all times beene remembred, as perhaps also may be in the Clauses concerning the Commissioners, which yet We are sure Our two Houses will not allow as an Argument against the force of 5. H. 4. as allowing it to be an Act concerning them.

We might further adde the opinion of Sir *Edward Cook*, (whose great learning and affection to the Rights and Liberty of the Subject are not unknown) who in his Treatise of the Jurisdiction of Courts (being one of those Books since this Parliament desired, or directed by the House of Commons to be published) expressly declares, That this Act, touching a Commission for arraying and mustering of men, is at this day of force.

But if any man be yet unsatisfied with so cleare Reasons on Our part, and in Our answers, We shall conclude upon him with the authority of the whole Parliament of 7. H. 4. Rot. Parl. n. 36. within two yeares after this Our Commission was settled, when probably many of the same persons were members of both the Parliaments, Whereby it appeares that this Act of 5 H. 4. is so binding as unto all the Powers of execution over the persons to be commanded, that the Clergy (who in former times had used to be arrayed amongst themselves by Writ or Commission

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mission to the Bishop or Arch-bishop) were bound, as within the body of that Commission so settled by Parliament. And they thereupon, in that very Parliament of 7. H. 4. are excepted out of this very Commission of 5. H. 4. which is therein mentioned; and it was then enacted, *That from thenceforth the Clergy be not any wayes charged amongst the Laity for the making of any such Array, nor for any contribution amongst the Laity for the same.*

Having thus clearly settled this Record of 5. H. 4. as a full Act of Parliament, as well concerning the powers of execution over the Persons to be commanded, as the taking away of the penall Clauses over the Commissioners, There is no further necessity, as to the matter in question, to consider whether or no that this Commission in all or any part thereof be contrary to any of the former Acts of 13. E. 1. 1. E. 3. cap. 5. 25. E. 3. cap. 8. & 4. H. 4. cap. 13. so much insisted upon in the Declaration. For that in such case, the Act of 5. H. 4. being the latter had beene a Repeale of them for so much.

Neverthelesse, for the further satisfaction of Our people (as being desirous to omit nothing which may be done on Our part for the clearing of the justice of our actions) Wee shall also examine those Statutes so farre as they are made use of in this Declaration.

And

And therein We professe the difficulty hath been more to finde out, then to answer the inference made upon these Statutes. For the Declaration reciteth the Statute of 13. E. 1. to bee a particular Asize (or Assesment) of Armes, both in respect of the *Kinde of Armes* to be found, and the *proportion of the estate* of every man, after which they are to be found, downwards from 15 pounds in Lands, and 40 Marks in Goods: And reciteth the Statute of 1. E. 3. That no man from thenceforth shall be charged to arme himselfe otherwise then he was wont in the time of the Kings Progenitors; and that no man be compelled to goe out of his Shire, but where necessity requireth, and sudden comming of strange enemies into the Realme. (Whereupon it is taken for granted, That the Statute of 13. E. 1. was a provision of Armes for defence extraordinary, and that this Statute of 1. E. 3. was meant with reference thereunto) And also reciteth the Statute of the 25 yeare of E. 3. (as to be to the same effect with the former) against the constraining men to finde men of Armes, Hoblers, or Archers, without consent and grant made in Parliament. And lastly, reciteth the Statute of 4. H. 4. (which confirms those two Statutes of 1. E. 3. and 25. E. 3.) And immediately thereupon makes this conclusion which followes; That by

these Acts (not distinctly applying the severall matters to the severall Statutes) it clearly appears, That the King could not, by the Law, give power to impose Armes upon the Subject, (which the Declaration calleth sometimes finding of Armes, sometimes finding men at Armes, all of different sences) or to compell them to be drawne out of their Counties: Which afterwards, in stating the Case, is expressed thus, That the Subject was not compellable to finde any other Armes then was declared by those Statutes, or to go out of their County, but in case of Actuall invasion by Forraigne Enemies. Against which this Commission is said to be.

But for Our clearer passage in this businesse, We shall single out the severall Statutes, with the Objections (as Wee conceive) intended upon each of them.

For the better understanding whereof, We shall distinguish of the principall Termes in this question used in the Commission, and severall Acts of Parliament.

First then, as for the words of *Arming a mans selfe* used in the Commission (as also in the Act of 1. E. 3.) they are litterally to be taken for the providing of Armes for a mans owne person, wherewith hee is to serve as a Souldier, either Horse-man or Foot-man, of what kinde soever; And the finding of Armes
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for others in the Commission, is but the finding the bare *Armes*, without providing the men, and are so to be taken here, (in whatsoever sence they may be taken else-where,) as may clearly appeare upon the very reading. And as for the words (*finding of men of Armes, &c.*) which are the words used in the Statute of 25.E.3. they are usually and properly enough taken for the setting forth of Souldiers, the paying of their wages, or contributing towards either of them.

This then being the sence of the words, Wee now proceed to the Statutes, and apply them to the two Objections; the one against imposing of Arms, the other against carrying out of the County: And first concerning the Statute of 13.E.1.

Thereupon the Objection against the power of imposing of Armes is this.

This Statute appoints a particuler Assize for the kindes of Armes and Proportions, as before. But Our Commission doth give power to assesse for the kindes (*any Armes*) and for the proportions, according to each mans ability; (which the Declaration termes to be *without limitation and at pleasure*) and so is contrary to this Statute.

To this Wee answer; That that Statute of 13.E.1. {besides that it is but an affirmative Statute,}

was made onely for the *ordinary* defence of the Kingdome, for the *preservation of the peace* at ordinary times; and was not intended as a provision of Armes for *defence extraordinary*: but that for the publique defence in time of Danger, the King might, and must charge other Armes, and other proportions, according to the exigency of the occasion.

Both which appeare together, if Wee consider that the provision in that Statute mentioned (which might be of use for the Peace) is very insufficient for the Service of War: For We cannot but observe the pettiness of the Armes, even according to the use of that time; for he that was rated highest by that Act, was to finde but a *Hawberge*, (which in that place signifies a *Gorget*) a *Breast-plate of Iron*, a *Sword*, a *Knife*, and a *Horse*: and others but *Gisarms* (which were Pike-staves) *Knives*, and other lesse weapons. And yet at that time there were *men at Armes*, which were Horse-men of compleat Armour, *Hoblers*, which were Light-horse; and there were *Pikes*, *Lances*, *Pole-axes*, and other weapons commonly used for Warre.

And no lesse considerable is it to this purpose, That for the charge of this defence no man of what estate soever, is by this Act charged above the rate
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of 15 Pounds in Lands, or 40 Marks in Goods, and he that hath 15 Pounds in Land, or 40 Marks in Goods, is charged as high as the greatest: which is not to be imagined in case of provision for defence extraordinary.

And to cleare this further out of this, and other Acts; it is plain, that this very Act expresth it selfe in these words, *That every man have in his house Har- nesse to keepe the peace*: and appoints those who are thereby assessed, to pursue Hues and Cries after Theeves and Robbers, (which went in those times with great strength, and in multitudes) *with their Horses and Armour*. And the old Articles of inquiry upon that Statute, being made in the same Kings raigne (and to be seen in the Statute-books) tend onely to inquiry touching the keeping the peace: as whether all men betwixt the age of fifteen and sixty be sworn to keepe the peace, and whether they have weapons in their houses according to the quantity of their Lands and Goods, for *conservation of the peace*, according to the Statute. And the Statute of 2. E. 3. cap. 6. renewes this Statute of 13. E. 1. in these words: Item, *As to the keeping of the peace in time to come, it is ordained and enacted, That the Statutes made in time past, with the Statute of Winchester, shall be observed and kept in every*

every point. And strange it were to imagine, that the *wisdom* of a Parliament, in the matter of arming of the Subject, made no greater or better provision against an *Enemy*, then against a *Theefe*, or a *Rogue*. And it is not so proper to charge the Subject at all times in the same manner and proportions as in times of danger.

And lastly, for further clearing this Our exposition of that Statute of 13. *E. 1.* Wee say, That although (as Wee have already shewed) the Commissions of Arrayes did, from the time of making the Statute of 13. *E. 1.* frequently issue both before and since the Statute of 5. *H. 4.* yet none of those Commissions were regulated by the Statute of 13. *E. 1.* but either they were (as commonly) for arming them according to mens degrees & abilities, without mentioning the Statute of 13. *E. 1.* Or, where any did expresse the quality and proportion of Armes to be found, They varied from the Statute of 13. *E. 1.* and appointed other kinde of Arms, and differenced and proportioned the estates of those who were to finde Armes, otherwise then is mentioned in that Statute: And sometimes with an expresse Declaration, that the Statute of 13. *E. 1.* was made for the conservation of the peace in a time of peace, when there was no danger of a for-
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raigne enemy. And though some use might be made of those armes appointed by that Statute in time of danger, as well as any other weapon: yet the same was not that kind of armour, which was principally intended as fitting for such defence; as may appeare by the presidents above cited. And the constant practice in all after ages for defence extraordinary hath ever been with other armes, and after other Proportions, as Wee beleewe will not be denied by any man.

Wee come now to the Statute of 1.E.3. whereupon the objection stands thus:

That the Statute of 13. E. 1. having made such particular asize of Arms (as before) for the kinds and proportions, this Statute doth ordaine, That no man from thenceforth shall be charged to arme himselfe otherwise then hee was wont in the time of the Kings Progenitors: Meaning (as the Declaration takes it for granted) according to that former Statute of 13. E. 1.

To this Wee shall give this answer: That (as Wee have proved before) 13. E. 1. was never meant as of a provision for defence extraordinary: and much lesse that the Statute of 1. E. 3. could intend any such thing.

And as the Penner of that Declaration cannot

therein shew any expresse reference to that Statute of 13. E. 1. and can, at the most, but barely conjecture it; so on the other side, Wee shall out of the penning and otherwise upon surer grounds conclude the contrary. For first, in this case, regularly, if not necessarily, (where a later Statute in the substance and meaning thereof wholly depends upon a former, and must have reference thereunto) the Parliament of 1. E. 3. would have made mention of this Statute of 13. E. 1. (as they did thereof) the next yeare following, when it was renewed, but for keeping of the peace. Next, in wisdom it was fitting (if so be that they had intended a further re-establishment of the particularities of the kinds and proportions of armes mentioned in 13. E. 1.) that when they had a former Statute so punctuall therein, they should not have thus left us for a true understanding of their meaning, to a generall enquire of the particular assize used for armes in former times.

But on the contrary, the Statute referring to the former usage, in the times of the Kings Progenitors (which being indefinitely spoken, Wee conceive, must be understood of all Kings times, as well before as after 13. E. 1.) the usage therein meant is but *Consuetudo Angliae*, the Common Law: and

and the Parliament could not, in all probability, in the mention of so ancient an usage, intend so late a Statute as this of 13. E. 1. which was but new in the particularity of the Assize, though antient in the Rule of charging, according to the quantities of every mans Lands & Goods, the former Assizes having been also different: Nor (considering that of Necessity, the severall kindes and proportions of Armes ever did, and must vary with the times) could they intend, that there ever was, for the times past, or could be for time to come, any such constant rule of any such particular assize concerning Armes, whereunto they could refer, as constantly used for the times past, or that might constantly endure for time to come: neither ever was, or can there be any other constant rule, then that generall rule of the Common Law (which can never faile) for the assessing Armes from time to time, for the kindes, according to the present use; and for proportions, according to mens abilities.

And it were very strange, that the Parliament of 1. E. 3. could conceive, That (for the defence extraordinary) the particular kindes of Arms in 13. E. 1. especially such petty provisions, could be proper and sufficient at this time in 1. E. 3. and would so continue afterwards.

And now that We have cleared this first part of the Statute of 1. E. 3. (*as concerning the Arming a mans selfe*) that it is not thereby intended, That the Subject should not be charged with Armes, otherwise then according to the Statute of 13. E. 1. We shall deliver what Our selves conceive of the meaning thereof; And it is thus.

Cl. 19.
E. 2. n.
17. Dorf. Towards the end of the Reigne of E. 2. severall Commissions of Array, issued into severall Counties; in execution whereof the Commissioners had much grieved and oppressed the Subjects: Incomuch, that upon complaint, speciall Commissions of Oyer and Terminer (usuall in those times) were sent forth for the enquiry after those grievances and oppressions. And although it doe not appeare what those were, yet since the Complaint was not against the Commissions themselves, as illegall, Wee cannot conceive otherwise, but that it was against the wilfull excesse of the Commissioners, in their surcharging the Subjects with Armes beyond their abilities of estate to beare; (as charging a man as a Horse-man; where it had beene sufficient for for his estate to have borne Armes as a Foot-man, and the like). contrary to the Tenor of the Commission.

But this course producing indeed little effect, in
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the time of King E. 2. partly out of the favour, which it is likely the Commissioners did finde, and partly by reason of the short remainder of His Reign, there was just occasion, both for Complaint and Reliefe in this next Parliament of 1.E. 3. And though the Particulars of the Petition in 1.E. 3. and the Answer out of which (according to the manner of those times) the Printed Act was made, doe not appeare, for the want of the Roll of that Parliament, yet Wee may well judge thereof upon this occasion, happening within the compasse of about one yeare before, and thereupon conclude, (as for the true meaning of that Act) That the provision intended to be made, was onely against the excesse of the Commissioners; which rather justifies, then any way disproves the Lawfulnesse of such Commission. And so the sence of the Act, applyable to the Complaint, will be, That whereas the Commissioners had over-highly taxed the Subjects, the Act provided, That they should not be otherwise charged, then as they had been in the times of former Kings; and (according to Our Commission) moderately, and so as they might live still according to their former condition: as in like case of other Statutes against outragious Distresses and Amerciaments.

And although Wee take this to be the sence of that Statute, yet if any man shall thinke this part of the Statute of 1. E. 3. *Concerning arming a mans selfe*, to be the same with the words of the Statute of 25. E. 3. *against constraining any man to finde men of Armes, &c.* (which is the sence of this Declaration, which makes both Statutes to be *to the same effect*, and makes the inference against Our power of imposing Armes upon them both) We shall not contradict him therein, being confident to make it evident, that this Commission is no way contrary to the words or meaning of that Statute of 25. E. 3.

But before Wee come to that Statute, Wee shall make one Observation upon those Statutes of 13. E. 1. & 1. E. 3. both together: and thereupon shew, that in the judgement of the whole Parliament of 4. H. 4. (whose authority is chiefly insisted upon in this Declaration) Our Commission is no way opposed by either of those Statutes: And it is this:

It appeareth, That the late issuing of the Commissioners, complained of in 4. H. 4. (which the Declaration supposeth were of the same nature with Our Commission, but Wee deny it) was the occasion of the Petition of the Commons in that Parliament.

In which petition, they intending to shew the illegality of those Commissions, and to obtaine (as they thereupon did) a confirmation of former Acts to the contrary, do recite the Statute of 25. E. 3. 18. E. 3. c. 8. and that part of the Statute of 1. E. 3. which is against carrying of men out of their Counties; and yet neverthelesse they wholly omit this Statute of 13. E. 1. and this first part of the Statute of 1. E. 3. concerning the Arming. Whereas it is to be presumed, they would have also recited this Statute of 13. E. 1. if they had conceived the same to be (as this Declaration sets it forth) the certaine Assize for armes, and such a Statute whereto all the rest had reference, or any way materiall against part of these Commissions. But howsoever making use of the later part of the Act of 1. E. 3. against carrying of the Subject out of the County, they would have made use also of this part of 1. E. 3. concerning the arming, and desired a confirmation thereof, as well as of the residue, and not thus purposely rejected it, if so be they had not, upon consideration, first resolved, that that part of 1. E. 3. was no wayes against the Commission.

And now Wee come to the Statute of 25. E. 3. whereupon the Objection stands thus

By the Statute of 25. E. 3. the Subject is not to be

be constrained to finde men at *Armes*, &c. if it be not by common consent and grant made in Parliament. But by this Commission the Commissioners have power, without consent or grant in Parliament, to command those who are able of body and estate to *arme themselves*: and those who are impotent, but able in estate, to *find Armes* for others: (which the Declaration in some places calls *finding Armes*, and in some places *finding men at Armes*) and is therefore against that Statute.

For this objection Wee need do no more then referre Our selves to Our former observation of the different sense of the severall words of *Arming a mans selfe*, and *finding Armes* for some other, which are the onely words used in the commands of this Commission, & the words, *finding of a man of Armes*, or other compleat Souldier, used in this Statute, and intended to be thereby prohibited: whereby it will be apparent, that arming a mans selfe, or finding bare armes for others, is not within the letter of this Statute.

Nevertheless for a more particular Answer,
 1. as to the first of these powers in Our Commission concerning *Arming a mans selfe*, Wee say, That this Act being against finding of men at *Armes*,
 or

or other souldiers, doth not any wayes intend to prohibit the compelling of men to arme themselves, (that is, their owne persons.)

For that had beene not onely against the Common Law, whereof that Act is but declarative, but also against those Statutes of 13. E. 1. (admitting it provided, as the Declaration supposeth, for defence extraordinary) and against 1. E. 3. by both which Statutes it doth clearly appeare, that the Subject is in some manner compellable to arme himselfe: And the Act of 25. E. 3. is in generall against all finding of men armed at any time. So that in that sense whatsoever the occasion is (though it be upon an actuall invasion of an enemy) he cannot be compelled to finde armes. And that exposition of the Statute would wholly take away all compulsory means of defence.

Nor will it be sufficient to answer this, That the arming according to those Statutes is assented unto in Parliament, and so is within the exception of the Statute of 25. E. 3. For the consent in Parliament (intended by this exception) must be understood of future consent in Parliament, as well as the constraining men to finde Souldiers prohibited by the Act is meant of a future finding Souldiers. And in the exception of the Statute

of 25. E. 3. There is not onely to be a consent, but also a *grant* in Parliament, for so the words are (*if it be not by common consent and grant in Parliament*) but in those Acts of 13. E. 1. & 1. E. 3. there is no colour of a grant made at all. And this Statute being declaratory of the Common Law, as appears by the reason of the Act delivered in the Petition of the Commons in these words, *Car cet est encounter le droit del Realme*. For it is against the right of the Realme, (which is as much as against the fundamentall liberty of the Subject) this Statute of 25. E. 3. must bee construed as of the Common Law; and before any Statute

And secondly, as for the other part of Our Commission, which is concerning the charging those who are impotent in body, but able in estate, to finde Armes for others: If such finding of bare Armes had beene within the letter of that Statute, or the finding of a compleat Souldier by such a man, had beene within Our Commission; yet it would have beene a harsh construction, (and doubtlesse contrary to the intention of the makers) by generall words, which were meant onely for provision in the generall Case, thus to have spared him in this speciall and particular Case of impotency, from contributing to the defence of the Kingdom,

dome, by finding another, as in his place, whilest he is as much, or more concerned then others, who must undergoe as much charge, and must also adventure their owne persons.

And by the Common Law, whereof (as Wee have said) this Statute is but declarative, those who were not fit to beare Armes, were notwithstanding chargeable otherwise towards home-defence, as appeares by the Presidents already cited, and many more.

And now Wee shall give the true sence of this Statute of 25.E.3. And this will best appeare upon the end and occasion of the making; which were these.

King E. 3. having had his Treasure exhausted
by the *French Warres*, was upon that occasion in-
forced to many hard pressuress upon his Subjects;
So that they had severall times bin charged, with
providing and setting forth of Souldiers; and some-
times with maintaining or paying of them: and
this in so excessive a manner, as that it cost a Coun-
ty sometimes at once a thousand pound; And all
this was done with relation onely to a forraigne
War, wherein the Title of the King to *France* was
onely in question: and nothing which directly
concerned the Kingdom of *England*: against these

V. 18.E.

3. Rot.

Parl. n.

11. 20.E.

3. Rot.

Parl. n.

13. and

others

of that

time.

there was just cause, to make provision by some Law; especially now when the Wars were renewing: And accordingly this Statute was made against imposing such charges upon the Subjects.

And what resemblance there is betweene those cases, and Our case, of charging the Subjects onely to finde Armes for themselves, or (in case of impotency) for another (as in their stead) and all but for home-defence, Wee refer to every mans Iudgement.

And thus Wee leave these three Statutes of 13. E.1. 1.E.3. and 25.E.3. with this observation, that if it be true, (which the Declaration takes for granted) that they are all to the same effect, that then Our Answer to any of these three, is an Answer to the rest.

Wee are now come to 4. H. 4. being the last of these Statutes, which (in the matter of Arming) are objected against Our Commission, as it stood at Common Law, before 5. H.4.

And herein Wee agree, that the Parliament Roll, whereupon the Statute is framed, is truly set forth in the Declaration: yet Wee conceive that, in Substance, there is no more upon the Roll, then in the Print; though some passages may give some light for the exposition of these other

other Statutes of 1. E. 3. and 25. E. 3. therein confirmed.

So as this Statute of 4. H. 4. being, in truth, but an Act of bare confirmation, without any additionall explanation, is already answered.

But because the Declaration doth import, That the Commissions (which issued lately before 4. H. 4. and were the occasion of that Statute, and are damned thereby, as contrary to the Acts of 1. E. 3. 18. E. 3. and 25. E. 3.) were of the nature of Our Commission, (which yet is not indeavoured to be proved) Wee shall also give a particular answer touching those Commissions.

And herein We say, that first it doth not appeare, nor is there any reason to presume that any of those Commissions were of the Tenor of Ours; And in case those Commissions did, amongst other Powers, containe also the Powers of Our Commission, touching the imposing Armes upon the Subject, it doth not appeare that those Commissions were particularly in those very powers held unlawfull. Both which must (but neither will) be proved; otherwise there can be no application.

But the truth is apparently to be inferred out of the Roll, That upon those Commissions the Subjects were enforced to go, or to finde others to goe

at their owne charges, not onely out of their proper Counties, but also (upon occasion of some insurrections) into *Wales*, which at that time, and (untill the Act of Vnion 27. *H.* 8.) was to some purposes, at least commonly reputed a distinct Dominion; as appeares even by this Parliament Roll, in these words, That none of the said Commons be distrained to goe into *Wales*, or else where out of the Realme, and otherwise: (the usuall phrase in severall Acts of Parliament, being also to this day, the Kingdome of *England*, and Dominion of *Wales*.) And such a Commission Wee may well admit to be against all those three Statutes, without impeachment of Ours.

9. H. 4.
R. Parl.
n. 17. 6.
H. 4. R.
Parl. n. 9.
1. H. 5. R.
Parl. n.
17. 2. H.
4. C. 10.
Stat. 2.
H. 4.
cap. 20.

Wee shall say no more as to this Statute single, but that (as We have observed before) both in the Parliament Roll, and Printed Act, the first Clause of 1. *E.* 3. concerning arming, being purposely omitted, it shewes that the meere matter of causing the Subject to be armed, was not the grievance then complained of, or meant to be redressed.

Having thus farre proceeded in Our particular Answers unto the severall Statutes of 13. *E.* 1. 1. *E.* 3. 25. *E.* 3. and 4. *H.* 4. as they were applicable to the first Objection made upon them, against Our imposing of Armes upon the Subject. Wee shall

shall, in the next place, proceed to the Answer of the other Objection made against Our Commission, upon the Statute of 1. E. 3. and 4. H. 4. of Confirmation: (For as to the other Statutes of 13. E. 1. and 25. E. 3. We doe not conceive, that they are, or can be meant unto this purpose.) Hereupon the Objection is this:

That by the Statute of 1. E. 3. and 4. H. 4. the Subject is not compellable to go out of His County; but in case of the sudden coming of an Enemy, which the Declaration interprets of an actuall Invasion: But this Commission gives Power, not onely to compell the Subject to goe out of his County before an actuall Invasion (as the case is put in the stating of it) but (as it is expressed in other parts of the Declaration) without Limitation, and at pleasure.

To this Objection Our Answer is; That both the sence of the Statutes, and of the Powers of Our Commission are mistaken. For first, (as Wee have before stated it) Our Commission gives that Power of conducting out of the County, onely against an Enemy, and for defence of the Countrey, in case of imminent danger, and but when and where it shall be most needfull; (And so not without limitation, and at pleasure.)

And

And secondly, as to the sence of the Statutes, We do deny, that the Subject is not compellable to goe out of his County, unlesse in case of an actuall Invasion, by a forraigne Enemy.

And herein, though Wee have not upon this Commission necessary occasion to dispute it; yet Wee cannot but observe, That the Declaration allowes of no necessity of compelling the Subject out of the proper County, in case of actuall rebellion, and onely against a forraigne Enemy; the ground whereof is a mistake (in recitall of the Statute of 1. E. 3. by the Act of confirmation of 4. H. 4. of the word, *And* betweene the two words, *necessity* and *suddaine comming*; The Act of 1. E. 3. going thus, That no man be distrained to goe out of his County but where necessity requirerh, *and* sudden comming of strange enemies into the Realme. And the Act of 4. H. 4. (which as We have before observed, reciteth not the whole Statute of 1. E. 3. but so much thereof, as upon occasion of the late forraigne service did then concerne the present complaint) being in these words, That none shall be distrained to goe out of their County, but onely for the cause of necessity (*Of*) sudden comming of strange enemies into the Realme.

Whereas,

Whereas, if in this recitall the word (*And*) had been put in place of the word, *Of*, or before it, both had agreed, and so the sence of the Statute, as to this matter of going out of the County, had been upon 4. *H.* 4. as it is upon 1. *E.* 3. *That no man be compelled to go out of the County, but in case of necessity or coming of enemies:* the word (*And*) in exposition of Statutes being most frequently taken for (*Or*) according to the Subject matter, and so the Statute had excepted two cases, necessity arising from within (by actuall rebellion) and necessity arising from abroad (by sudden coming of strange enemies:) this exception in both being absolutely necessary for defence of the Realm and according to the Common Law (of which the Statute is but declarative) and the practice both before and since. And indeed it could be no otherwise in property of speech, for there cannot be a cause of necessity of the sudden coming of enemies, but there is a necessity of defence *against* their coming.

And in this case We are to be guided by the Statute 1. *Ed.* 3. as it was Originally, as it is also truly set forth in the Declaration, and agrees with all printed Statutes both in English and French,

H

and

& ancient Manuscripts, all of them derived from the Originall Statute Roll which was lost before 4. H. 4. (that which now remains being but a Transcript of a Transcript.)

Thus then, without more, We shall apply Our selves to the Objection as it is made upon the words of 1. E. 3. both in the Originall and the Recital. And We say That the Subject is compellable to go out of his County for defence of the Kingdom, as necessity shall require, before the Landing or other Entry of the Enemy, to prevent his Landing or Entry.

And for this We shall but recite the words againe; And they are these, *That no man be compelled to go out of his County, but where a necessity requireth and sudden coming of strange enemies into the Realm.*

Wherein it seemes to Us most plaine, that these words require no such Actuell Landing, or Entry of an Enemy into the Kingdom, before the Subject is Compellable out of his County. For the words of the Act are not (as to this point) when the Enemy *is come*, but *upon the coming*, not *within* the Realm, but *into* the Realm. And all men know, that in ordinary Speech, a man may

may be said to be coming into a place when he is upon a remove to a place; but most properly, when he is on his way, especially when he approacheth, with an intention to enter therein, and in such sence these words of coming into the Realm must be taken in this Statute.

But in case the words (*of the enemies coming into the Realm*) might bear a doubtfull interpretation, that sence must be taken, which agrees with the Common Law before practised, whereof this Act is but Declarative, & the constant practice of all ages since that is, That the Subjects have ever been commanded, and gone out of the County against the Enemy before any Landing or Entry.

And to give this Statute of 1. E. 3. any other sence were against all Common reason, and the rules of government and defence; which is not to let the Enemy first come in, if it be possible to keepe him out: and it may be much more easie to prevent the coming into the Land, (especially by Sea in opposing the Landing) then afterwards to expell him. And it cannot be expected, that the Forces of one County alone, should be able to resist the entry of a powerfull Enemy.

And lastly, as for those Commissions, which

were damned in 4. H. 4. those had no resemblance to our Case, nor are warrented by the Exception of 1. E. 3. For that (as appears before) the Subject was then carried out of the County not for defence of the Kingdom, as the Exception of this Statute requires, but for suppression of an Insurrection in *Wales*, which was not then taken as part of the Realm: and the Prayer of the Commons in 4. H. 4. made upon that Occasion, and therein grounded upon 1. E. 3. was not meerly because they were carried out of the Counties, but because they were carried out of the Realm in a Service, which was not for the necessary defence thereof.

We have thus far, upon this last head of Our discourse, only Answered the Objections made upon these Statutes of 13. B. 1. 1. E. 3. 25. E. 3. and 4. H. 4. We shall now conclude this part of Our Answer, with a return of all those Statutes against the Declaration, and in justification of Our Commission.

First, as concerning 13. E. 1. since that, (as We have before observed) the Statute was made only with relation to the keeping of the peace, it implies, that there is another rule in the matter of

of imposing of Armes for defence extraordinary.

Secondly, as for 1. E. 3. (besides Our former observation, That in all probability, the Act was made but upon Complaint against the excesse of Charging by the Commisloners, and not against the powers of that Commislon, which had lately before issued, which rather justifies the Commislon then otherwise.) We further say, That if We should admit, that the Statute of 1. E. 3. *That no man should be charged to arm himselfe, otherwise then he was wont in the time of the Kings Progenitors,* hath any relation unto 13. E. 1. and that so the sence thereof were, That none should be compelled to finde Arms, otherwise then according to that Statute of 13. E. 1. Yet then that Statute of 1. E. 3. (as 'tis plain) must be meant only as concerning ordinary defence; and that as the Subject is in case of necessity to be carried out of the County, So in that case he may be compelled to be Armed otherwise then at ordinary times.

To this purpose We note, that in the Statute there are two distinct propositions joyned together, one against the Arming of the Subject, the

other againſt going out of the County; And the clause which is next ſubjoyned is an exception *Sinon pour cause de neceſſite, &c.* Unleſſe it be for neceſſity, and the ſudden coming of ſtrange enemies. Which exception, upon ſuch admittance, is not only applicable to that laſt clause before, concerning *the going out of the County*, but as to the *Arming*: The ſence thereupon alſo being thus; That though in caſe of ordinary defence, the Subject be not compellable to bear other Arms then according to 13. E. 1. as neither to go out of the proper County; yet for the extraordinary defence of the kingdom, in caſe of neceſſity (wherein more muſt be done then ordinarily) both, Arms are to be impoſed by other rules then in 13. E. 1. and alſo the Subjects are to go out of the County; For ſo it followeth in the next words of the Act; which are theſe, *And then it ſhall be done, as hath been uſed in times paſt, for the defence of the Realm.* And this ſence, upon this admittance, cleerly appeareth out of the courſe of former times in ſuch caſes, to which the Statute doth refer.

As for 25. E. 3. (beſides that the Declaration ſaith it is to the ſame effect with 1. E. 3. and was made with relation to a forraign war, as We have

have observed,) if (as the Declaration must admit) that the exception of finding men at Arms &c. by Common consent, and grant in Parliament, be intended as well of Acts of Parliament past as to come, then Our Commission, in the power of imposing Arms, being warranted by 1. E. 3. is also warranted by that Act of 25. E. 3.

And for 4. H. 4. (besides what We have before observed, upon the omission therein of the first part of 1. E. 3. concerning imposing of Arms, and that it applies 25. E. 3. but to a forraign war) the generall sence, and Judgement of that Parliament, excepting then only against other Commissions, seemsto allow of this; for that otherwise, it is not to be imagined, that immediately in the same year, there should issue out a Commission of Array, and in the next year, there should issue out that other which was corrected in 5. H. 4. both of the same form, and the latter bearing *Teste* the day of the Summons of the Parliament of 5. H. 4. And that at that Parliament, ^{4. H. 4. rot. Parl. part. 2. m. 10.} though some amendments were made in it, yet no exception should be taken to the legality of the powers: whilest (as the Declaration observes) it is probable, That many of the House of Commons,

Commons; and it is certain that most of the House of Lords, were members of the Parliament of 4. H. 4. and knew the meaning thereof.

And thus we have answered to the full satisfaction (as We hope) of all indifferent Judgements, the severall Objections made against the legality of Our Commission of Array as it stood before, and at the making of the Act of 5. H. 4. and thereby proved, That Our Commission was warranted by the Common Law, That the powers thereof remain untouched by the Statutes of 1. E. 3. 25. E. 3. or 4. H. 4. And that it was afterwards allowed and settled (as a rule or pattern, whereby Commissions should issue in after ages) by the Act of Parliament of 5. H. 4.

We have yet some other Objections in Our way, which admitting the legality of Our Commission as it stood in 5. H. 4. are made against it upon some latter Acts.

The first in time is upon the Statute of 4. and 5. P. & M. c. 4. which settles an assize and proportion of Men, Horses, and Arms, which every man was to finde; which the Declaration saith was *without Question, a repeal of this Statute of 5. H. 4.* And accordingly, We shall take that first into

into consideration, For though upon the repeal of that Statute by 1. Jac. 1. 25. the Declaration agrees, That Our Commission, if once settled by 5. H. 4. is now again in force, Yet an inference is made from thence, That the Parliament of 1. Iac. would never have repealed that Statute of 4. & 5. P. & M. if they had thought that any such power of imposing Arms, as is in the Commission, would have been thereupon revived.

The words of the Statute of 4. & 5. P. & M. cap. 2. are these. *Be it enacted, &c. That as much of all and every Act and Statute concerning onely the keeping or finding of Horse, Horses, or Armour, or any of them heretofore made and provided, and all and every forfeiture or penalty concerning onely the same, shall be from henceforth utterly void, repealed, and of none effect.*

To this We say, first, that 4. & 5. Phil. & Mar. doth not repeal 5. H. 4. either by the words or meaning.

As to the words, They extend onely to a repeal of such Acts which do appoint particular Assizes (or Assessements) of Arms: all which upon that Statute of 4. & 5. Ph. & M. (which appoints a new Assize for kinde of Arms and proportions)

would be either contrary or altogether uselesse. And to that purpose the Statute speaks of repealing of Acts *concerning keeping or finding of Horse, Horses, or Armour*, which, as it must be meant of Acts concerning keeping or finding of *Horses* in particular for kind or number; So as concerning (*armour*) in generall, it must, by the constant Rules of construction of Statutes, be meant of Acts of the like nature as the former, that is, Acts concerning the appointment of some particular armours, as a Gorget, a Brest-plate, and the like, such as were the Statute of 13. E. 1. and 33. H. 8.

But this Statute of 5. H. 4. is nothing concerning the appointment of any particulars, either for the kind of Arms or proportions: but doth onely enact a Commission issuable, without commanding that it shall issue, which is referred to the Kings pleasure (upon a lawfull occasion). Nor doth the Commission it self mention (as is apparent) any particularity of Arms or proportions.

And if the Statute of 4. and 5. *Ph. & M.* were meant of such Statutes, as speake of finding Arms in generall, it had as well repealed the Statutes of 1. E. 3. 25. E. 3. and 4. H. 4. as this Act of 5. H. 4.

H. 4. which no man will say was ever intended.

But in truth, this Commission being in generall, doth no wayes contrary this Statute of Ph. & M. but that the particulars of the Assessement by that Act, both for the severall Kinds of Arms and proportions, might have been very well put in Execution by this Commission.

For the Commission gives Power to asseſſe every man *juxta statum & facultates*, According to his degree and Ability. And this Parliament of 4. and 5. Ph. & Ma. appointing Arms fitting for defence of the Kingdom in those times, and proportions fitting (in their Iudgements) for the severall degrees and abilities of every man; That Act did not thereby take away the power of the Commissioners wholly, but did only give particular rules for the kind of Arms and proportions, which the Commissioners were to observe in the execution of their power, thereby only regulating, but not destroying their powers.

And if this Statute of 4. & 5. P. & M. had taken away the first Powers of the Commissioners concerning arming, yet had it not taken away the other severall and independent Powers of Arraying, Training, Mustring, or Conducting

thole men so furnished according to that Statute, but that they had remained to have been executed (at least by a distinct Commission which might have been issued at pleasure for that purpose.)

And this also appears by the Statute of the same Parliament of 4. & 5. P. & M. cap. 3. (which is in force at this day) which being concerning mustering, hath occasion to mention, and doth expresse the old power still remaining to issue Commissions of that nature, in these words, *That if any person that shall be commanded at any time hereafter generally or especially to muster afore any such who shall have authority or commandment for the same, by, or from the King or Queens Majesty, or the heirs or Successors of the Queens Majesty, or by any Lieutenant, &c. do absent himselfe, or at his appearance do not bring his best furniture of Array and Arms as he shall then have for his person in readinesse, shall be imprisoned, &c.*

But neither by that nor the other Statute of P. & M. cap. 3. is there any new authority given to the King to grant Commissions for Musters, but the same is admitted to continue as not repealed. And as to the point of appearing at Musters. We made

made use of that Statute of 4. & 5. P. & M. cap. 3. in Our Proclamation. And doe wonder how the Penner of that Declaration could imagine, We meant any such further use therein upon that Statute, as the Declaration sets forth.

And here by the way We observe a mention in this Statute, of 4. & 5. P. & M. cap. 3. of a power of mustering in Lieutenants, to whom other Powers contained in Our Commission were also granted, and might have been also mentioned in this Statute, if there had been occasion.

And secondly, as to this Statute of 4. & 5. P. & M. c. 2. We say, That in case that Act of 5. H. 4. had been repealed by 4. & 5. P. & M. yet this Commission had still continued in force notwithstanding any bare repeal; for that (as we have proved) this commission was (before that Statute) warranted by the Common Law, which did still remain in force so far as it was not expressly contrary to the further particulars of that Act.

And now We come to the Objection principally intended against this Commission upon the alteration of the Law at this day since 5. H. 4. wherein the case is this.

The Statute of 13. E. 1 made an assize of Arms

for the severall kindes and proportions according to mens severall estates. Then 3. H. 4. enacts this Commission with power to asseſſe men according to their abilities. Afterwards 13. E. 1. is repealed by 21. Iac.

The argument hereupon in the Declaration is made thus:

That the Commission, as to the finding of Arms *juxta statum & facultates*, is so grounded upon that Statute of 13. E. 1. (which was then in force, and did enact the finding of Arms *juxta statum & facultates*, in manner as is therein expressed) that that Statute of 13. E. 1. being since repealed, that Commission is likewise repealed, and become unwarrantable at this day.

For answer whereunto, in the first place, We do deny that this Commission is any waies grounded upon 13. E. 1. First, for that (as We have proved) 13. E. 1. originally was not meant, as a provision of Arms for defence extraordinary; much lesse so intended here.

Secondly, if it were for defence extraordinary, yet neither this Act of 3. H. 4. nor the Commission thereby settled, have any relation thereunto in words, much lesse in meaning.

For

For the words, There is no mention of 13. E. 1. either in the Act or Commission, but the words of the Commission are generall, for imposing Arms *secundum statum et facultates*. According to every mans degree and ability, without limitation of the kinde of Arms, or particular severall proportions of estates.

And for the meaning, We cannot conceive it to be lesse, then according to the full extent of the words, For there is lesse reason to imagine that the Parliament of 5. H. 4. did any waies intend the assize of Arms established by 13. E. 1. then there was to imagine the like upon the Act of 1. E. 3. for that between 1. E. 3. and 5. H. 4. all kinde of arms were more altered then betwixt 13. E. 1. and 1. E. 3. and in this space of time, Guns were come into use in England, which were both necessary to be commanded and provided against by other arms.

And to avoid Repetitions, We further referre Our self, in these two particulars, to what We before observed upon the Statute of 1. E. 3.

And as for any restraint of those generall words of Our Commission, by any construction of Law to the particular assize of 13. E. 1. We say, That though

though a subsequent particular Act may restrain the generall words of a Commission (as We have said before, upon the Statute of 4. *Ed. 3. Ph. & M.*) because the subsequent act, as it may take away, so it may limit any Power given either by Common Law or Statute; yet a precedent particular Act (upon the same reason, because it hath no such power) doth not regularly restrain the generall words of a subsequent Statute, which hath Power to controll the former; and (as in Our case) where the meaning appears to be as large as the words cannot possibly restrain them. But in this We need not labour, For though the Declaration in making way for this Objection, admits the Commission, to have some colour to be legal, as grounded upon 13. *E. 1.* as to that part of finding arms *juxta statum & facultates*. Yet it is the main and throughout ground of the Declaration, That this Commission, because it is general, is against the Statute of 13. *E. 1.* and the other Statutes, and so void; whereas, if the Commission had been restrained to 13. *E. 1.* then it could not have been void as contrary thereunto.

But, admitting that this Commission was, by construction of Law, necessarily to be regulated

lated according to 13. E. 1. whilst that Statute was in force. Our answer is that nevertheless this Commission did not fall by the repeal of that Statute.

Wherein We shall admit (which the Declaration supposeth, though by Us it is disproved) That this Commission was not warranted by the Common Law before the Statute of 5. H. 4. and then the Case is but this.

The Statute of 13. E. 1. doth appoint a particular Afsize of Arms for kinds and proportions, according to this necessary rule; the arms for the kinde shall be fit for defence; and for the proportion, shall be according to mens abilities. (for such is the Act.) Afterwards 5. Hen. 4. doth establish this Commission, wherein there is no particular reference unto this Statute of 13. E. 1. but the rule is generall to charge Arms, for the kinds, according to the use of the time (for that is necessarily implied) and for the proportions, according to mens degrees and abilities, which are equall rules fit ever to continue, though the kinds and proportions, may and must alter.

In this case We doe agree, That if the Commission had expressly referred to charge accord-

ing to that Statute of 13. E. 1. then that Commission could have been no longer of force then the Statute had continued. For then it had been no more in substance, then if the powers had been but particular, to charge certain Arms, and in certain proportions according to that Statute. And in this sense We must agree with the Declaration, That a Commission being so grounded upon a Statute, upon the Repeal of the Statute, both fall together.

But in this case, (thus admitted) where the Commission is generall, and if 13. E. 1. had never been, must have had its full operation, according to the words, both for the kind of Arms and proportions, and was regulated but by a bare construction of Law, both for Arms and Proportions by 13. E. 1. which the Parliament might think fit to be a rule for that time; it seems strongly to follow, that when 13. E. 1. (which was the only impediment why it did not work according to the extent of the words) is repealed, the operation of the Law upon this Commission, by force of that statute, must likewise cease: and the Commission must be construed according to the words, the rather for avoiding of this mischief, that

that otherwise the Kingdom should be without
all necessary means to put it into a posture of de-
fence, which that Act did intend principally at
perpetually to provide for.

But more fully to take off this Objection, We
must here remember (what we have proved
before) that the Powers of this Commission in
the latitude of the words thereof for imposing
Arms, *secundum statum & facultates*, according to
mens degrees and abilities, was warranted at the
Common Law before any Statute, and was to
be executed without the direction of any particu-
lar Act or size for kinds and proportions. As at this
day severall like powers for arming men both
by Statute and Common Law according to their
abilities, as for high ways, poor of the Parish and
the like are to be executed.

These then being the Powers at Common
Law, As it is cleere they are not taken away by
any affirmative Statute, (such as 13. E. 1. seems to
be) So if We shall admit (as strongest against Our
self) that there were any negative words in this
Statute or any other Statute grounded thereupon,
that the Subject should not be compellable to be
armed otherwise, (which other Statutes (ac-

According to the ground rightly taken in the Declaration must necessarily fall by the repeal of 13. ~~Ed.~~ Then that Statute being repealed, the Commission thus freed of those Statutes, remains in full force as it was at the Common Law.

And now that wee have passed over the Acts of Our Predecessors as well before as after the Act of 3. H. 4. We are encountred with Our own Acts; the Petition of Right, and a Recitall in an Act this present Parliament, as being both against Our Commission.

Whereunto We need to say but this. That it appears out of themselves, that neither of them were ever meant to introduce a new Law: So as if (as We have proved,) Our Commission be not against the Law, as it stood formerly, they were not intended nor justly ought to be extended against it. But to give yet more particular and full answers thereunto, We say, First, for the Petition of Right, it no waies extends to our Commissions of Array.

The Objection made upon it stands thus. The Petition of Right sets forth, That by the Lawes and Statutes of this Realm, the Subjects have inherited

herited this Freedom, That they should not be compelled to contribute to any Tax, Tallage, Aid, or other like charge, nor set by common consent in Parliament. And after complains, That divers charges have been laid and levied upon the People by Lords Lieutenants, Deputy Lieutenants, Commissioners for Musters, Justices of Peace, and others, by command or direction from Us, or Our Privy Councell, against the Laws and free Customs of the Realm, which the Declaration alleadgerh to be the breach of those Laws.

Then the words of the Petition are thus applied, That here is a Taxe or Charge imposed upon the people, by Compelling them to find Arms by command and direction from Us, under Our great Seal, without consent in Parliament.

And the meaping of the Petition is thus enforced, That it is very well known, and doth sufficiently appear, that the charges there mentioned to be laid by Lords Lieutenants, and Deputy Lieutenants, were the charging of the Subjects with Arms against Law, by colour of their Commission from Us, and consequently this Commission is against the Petition of Right.

For Our cleerer answer, We shall set down the summe of the Petition, for so much as concerns the unlawfull charging of the Subject. And it is this,

First, the Petition recites severall Statutes, as made against the compelling the Subject to the making or yeelding any Gift, Loan, Benevolence, Taxes, Aids, or such like Charges without Common consent in Parliament; and next setteth forth a violation of those Statutes, by the Commissions of Loans, and Execution of them; and that divers other Charges had been laid and levied by Lords Lieutenants, and others (as is afore-said) and lastly the Prayer is substantively of it self, without any relative words, yet extends to all that was before complained of, and contains the substance of all those former Statutes in these words, *That no man be compelled, to make or yeeld any Gift, Loan, Benevolence, Tax, or such like Charge without common consent by Act of Parliament.* And Our answer to that part of the Prayer, amongst the rest, is, *Let right be done as is desired.* And Our answer to the Objection stands thus.

First, that whatsoever sense any words of the Preamble may seem to import, yet without question

tion, there is no more in this Preamble then is after contained in the Prayer: So if Our Commission be not against the Prayer, there can be no Argument against it drawn out of the Preamble, or if in truth there were more in the Preamble then in the Prayer, (whereunto only the Royall assent extends,) yet nothing could bindingly be concluded thereupon (as We shall further shew upon occasion.)

This then onely rests to be considered upon this Objection; Whether the powers, in Our Commission, to compell the Subjects, able of body and estate to Arm themselves, and in case of impotency to find Arms for others, for the necessary defence of the Kingdom, can be said to be a compelling of the subject, *to make or yeeld any Gift, Loan, Benevolence, Tax, or other like Charge, contrary to the Prayer of the Petition.*

Upon the Case thus truly stated, it is cleere, That here is *no yealding or making of Gift, Benevolence, or Loan;* And as for *making or yealding any Tax or other like charge*, though it be true, That this arming a mans self, or finding Arms for another, cannot be done without Charge: Yet We appeal to every mans understanding, whether

Our

Our Subjects can, upon this Commission, be said to make or yeeld (for so are the words) any Tax or other Charge against the Petition, any more, then if We command a City to repair their Walls, or a Levell (putting the Case before any statute, to take away all colour of evasion) to repair the Sea-banks, when they were in decay, being no particular advantage to Us, but for the Common good of themselves.

The truth is, That albeit the imposing of divers charges, & commanding divers Acts drawing charges upon the Subject, though possibly for their advantage, are void in Law: notwithstanding it doth not follow that they are void as against this Petition. For the Petition of Right, as against the charges therein mentioned, is onely to be intended of Money, or other thing valuable, and to be parted with to or for Us, or Our advantage: such as are all the charges more specially mentioned in the preamble and Prayer, as that of Gift, Loan, and Benevolences, And such as were those Charges intended in the Preamble under the generall expression of divers other Charges imposed by Lord Lieutenants, &c. which We think is very well known to most Counties, to have

have been meer Pecuniary Payments, and which We ought to have born. And for the other charges, that is, of Taxes, Tallages, Aydes likewise mentioned, which as to this purpose are but *Synonoma*, and of one signification, they are meant of money or other things valuable, and for the King; and so used in the old Statutes, and had been in former times imposed upon the people, without Act of Parliament; and accordingly all of them are so to be expounded in the Preamble. And the Prayer of the Petition saith nothing expressly against the Commanding the Subject to do a thing which may be necessarily of expence or Charge, (wherein the Act is onely intended, and the Charge but a necessary Incident) but the Prayer is onely against the compelling of the Subject to ~~pay~~ *pay*, or make those kinds of charges. So as the clear sense of the Petition, both according to the occasion of complaint therein mentioned, and the ~~Law~~ *Law* whereupon it is framed, as well as the propriety of the words, is only against drawing from the Subject, either money or money-worth, by any of those particular charges therein mentioned, or any other charge of like nature (under what specious title soever) for the Kings

advantage, which the more plainly appears, for that the charge must be *yielded or made*, as upon *Gift, Loan, &c.* which must necessarily be intended unto some person, and no other person can be here colourably intended but the King.

And if the Petition, by any construction, may extend against the commanding of any *Acts*, which in the execution may induce charges, yet such charges must (according to the very words of the Petition) be *such like Charges*, that is for Us or Our advantage, as the particular *Charges* therein mentioned, of *Gift, Loan, &c.* But this charging of the Subject with Arms for the necessary defence of the Kingdom, cannot be said for Our particular advantage, all Our Subjects having therein a common interest.

As for the meaning of the Petition inforced in the Objection from the Charges by Lord Lieutenants, and others complained against in the Preamble, sure We are that those must be such in the particular, as are after contained in the general words of the Prayer, to which We have answered before. And though it be to this purpose said in the Declaration, That those Charges by Lord Lieutenants and others, were meant of charging

ging of the Subject with Arms, certainly no such thing can appear in the Petition, which speaks but only of divers charges, but names none in particular; nor can there be any other assurance that the Houses did intend any such thing, but by Votes, wherein they onely speak: and if any such Votes had been, We doubt not but We should have found them intented in this Declaration. And a particular complaint of so great a grievance (as Our Commission is made to be) would have been expressed in the Preamble of the Petition, with the Quotations of Statutes to the contrary, as was done concerning other grievances. But in truth it is well known, That about that time, upon occasion of Our wars, there were divers other charges imposed by Our Lieutenants, and others, of a far differing nature, most of which were by direction from Us or Our Privie Councill, according to the exigency of the time and some former practice.

And We do beleeve, that there was at that time neither complaint or occasion of complaint against the imposing of Arms for home defence of the Kingdom. Howsoever We are sure that no such complaint was particularly represented

unto Us, or Our Answer intended thereunto.

And now to clear this sense of the Petition
 of the judgement of both Our Houses this
 very Parliament, We demand this Question: If
 so be the imposing Arms for defence be a charge
 upon the Subject within the meaning of this Pe-
 tition, how the two Houses will justify their
 Ordinance, which We are sure they will not call
 an Act of Parliament; for without an Act of
 Parliament, no charge thereby provided against,
 can be imposed upon the Subject, the words be-
 ing plain, That no man shall be compelled to
 make or yeeld any Gift, Loan, Benevolence, Tax,
 or other such like charge, *without common consent
 by Act of Parliament.*

And now, since this Declaration hath given
 Us such occasion to examine Our Commission
 upon the Petition of Right, We shall conclude,
 out of that Petition, That that Parliament did
 conceive the powers of this Commission war-
 rantable in every point.

For it is plainly to be observed, that the Com-
 mons did then take into consideration the gene-
 rall grievances of the Kingdom, more particu-
 larly, concerning Military affaires, and therein
 the

the actions of Lord Lieutenants, and Deputy-Lieutenants with their Commissions and powers, and their exceeding of their power, as expressly the billeting of Souldiers, and the payment of Billet-money, Muster-masters fees, and others of that nature, were then in dispute. And although the two Houses could not but take notice of the imposing of Arms upon the Subject by Our Commission of Lieutenancy, & their powers to Levy, call together Arm, Array, Train, and Muster Our Subjects inhabiting in Our severall Countreys, and to conduct and lead them against all Our Enemies, and all Rebels and Traytors, from time to time, as need should require, (in which particulars they contained the powers of Our Commission of Array:) Yet the Complaint was not made against them for what they did by virtue of their Commission (no more then against the Justices of Peace, though complained of, together with the Lieutenants) but for matters wherein they did exceed their Commission, upon the Command, or direction from Us, or Our Councell; the Petition throughout distinguishing betwixt such Commands, or directions, and Our Commissions.

So that We conclude, here was not only an admission, but an approbation of those powers, by that Parliament. to give orders touching this
 We come now to the recitall in the Preamble of the late Statute made this Parliament. The words are these
 For as much as great Commotions, and Rebellions have been lately raised and stirred up in His Majesties Kingdom of Ireland by the wicked plots and conspiracies, of divers of His Majesties Subjects there (being traitorously affected) to the great endangering, not only of the said Kingdom, but also of this Kingdom of England, unless speedy course be taken for the preventing thereof, and for the raising and pressing of men for those Services: And whereas, by the Laws of this Realm, none of His Majesties Subjects ought to be impressed, or compelled to go out of the County, to serve as a soldier in the Wars, except in case of necessity of the sudden coming in of strange Enemies into the Kingdom; or except they be otherwise bound by the Tenure of their Lands or possessions &c. upon which Preamble, there is, in that Statute, some provision made for a time for raising and impressing men for those Services.)

And upon this Preamble, the conclusion is made

made in these words. *That this Commission is directly contrary to this Declaration is so evident, that it requires no application.*

To this Objection, We say, We might make Our Answer as short as the inference is by affirming. That it is evident, that this Commission is not contrary to this recitall, And surely We think that what We have already opened, being applied to this Objection, would warrant that Answer.

But that We may leave nothing undone, that may tend towards the full satisfaction of Our good people, We shall also give this a particular answer.

First, We say, That if this recitall had been an Act, yet there were nothing in Our Commission contrary to the letter of it, for thereby this Commission, no man is compellable by any speciall words to go out of his Country.

And the generall words, (giving power to the Commissioners, for leading them to the sea-coast or elsewhere (as We have often repeated) are with these limitations: They are to lead them, but when there is imminent Danger of enemies for defence of the Kingdom; and then only

only they are to be led to such places, as shall be necessary for the expulsion, vanquishing, and destruction of the said enemies, And this is a case of necessity both within the words of this recitall, and according to the sense of the same words, in the Statute of 1.E.3. and 4.H.4. (therein meant) as We have before shewed.

And thus we might leave this Objection, but that it implies a matter of a greater consequence then plainly appears. That recitalls of the Law, in Preambles of Statutes are binding, For in this Objection, this recitall is called a *Declaration of the Law* and Our Commission said to be *contrary to that Statute*, and it further implies, That even in the greatest and most horrid Rebellion, the Subject cannot be compelled out of the County, for the suppression thereof. But to this We answer, That the difference is apparent between an Act of Parliament declarative, and a recitall in a Preamble. For such an Act (in any matter though mistaken) being assented unto by Us, and Our two Houses, is equally binding (as having equall authority) with an Act introductive of a new Law. But the recitall in a Preamble, is no part of the Act (the Royall assent being
only

only to that, which is expressly or tacitely prayed to be enacted:) Nor can it any wayes so much as imply Our opinion: For otherwise, Kings must be enforced oftentimes to deny a good Law, for an ill Preamble; The consequence whereof is great in such an Act as requires expedition, where a Bill once denied, is not regularly to be offered again in that Selsion of Parliament.

And if it were needfull, divers mistakes of the Law in Preambles might be produced by which We would be loath to bind our Subjects.

Neverthelesse, though Preambles be not in themselves sufficient to declare Laws, yet We deny not they are of good use, though not convincing Arguments to expound them.

And for Our power in the matter of Rebellion, besides what hath been said, We might also adde (if it were materiall to this Commission,) Preambles, Recitals, and other necessary Inferences out of other Statutes (made since those intended in this Recitall) which would prove, that in case of Rebellion all Our Subjects ought to assist Us, and to attend Our Person, upon Our command, for the defence thereof, whensoever We should require it.

Subjects, by the duty of their Allegiance, are bound to serve their Prince

See 11.
H. 7. in
the Preamble,
That the

in his Wars, for the defence of Him and the Land, against every Rebellion, Power, and Might, reared against Him. And 11. *H. 7. c. 18.* Whereas every Subject, by the duty of his Allegiance, is bound to assist the King at all seasons when need shall require; and most especially such as have by him promotion or advancement, as Grants, and Gifts of Offices, Fees, and Annuities, which are, and verily be bound by reason to give their attendance upon his Royall Person, to defend the same, when He shall fortune to goe in his Person in wars for defence of the Realm, or against his Rebels and enemies. And 5. *El. cap. 5.* Be it enacted in favour of Fishermen, and Mariners, That none of them shall hereafter at any time be compelled against his or their will, to serve as a Souldier upon the Land or Sea, otherwise then as a Mariner, except it shall be to serve under any Captain of some Ship or Vessell for landing, to doe some especiall exploit; which Mariners have used to do, or under any other person, having authority to withstand any Invasion of Enemies, or to subdue any Rebellion within the Realm. And see 19. *H. 7. cap. 1, 2, & 3. E. 6. c. 2.* And 4 & 5 *Ph. & Mar. c. 3.*

And the truth is, the occasion of this Act, now urged against Us, appears to be for the service of *Ireland*, and the intencion of it (for so much as is the enacting part) was to take away all question concerning the pressing of the Subjects of *England* for the suppression of the Rebellion in *Ireland*. And so concerned forraign service, and not home defence, either against Invasion of Enemies or Rebels.

And thus far the work of the Declaration hath been to overthrow Our Commission by Statutes alleadged to be directly against it. There remains yet some other Objections drawn from the

the opinion of former Parliaments, and the practice of Our selves and Our Predecessors, and those not directly, but by inferences. But these, as we shall shew, are so farre from concluding against Our Commission, that they rather prove the contrary.

The first of these Objections is upon the Statutes of 1. *Jac.* c. 25. and 21. *Jac.* c. 28. of Repeale: And is thus, That the Statute of 4th 5. *Ph. & M.* cap. 2. having repealed this Commission (for so the Declaration supposeth) They had shewed little care of their own and the Subjects liberty, in the Parliament of 1. *Jac.* to repeal that Statute thereby to revive the power of this Commission, which would have subjected the people to far greater bondage: and from thence inferreth, That it is not probable that the Parliament of 1. *Jac.* would have repealed 4th 5. *Ph. & M.* As likewise from the Statute of 21. *Jac.* (which repealed the Statutes of 13. *E. 1.* and 33. *H. 8.*) That it is not probable, that the Parliament of 21. *Jac.* would have repealed those Statutes (which in a moderate manner proportioned the Arms every man was to have in certainty:) And suffer an Act (meaning this of 5. *H. 4.*) to continue, which established

blished a power in the King without limitation, not only to impose Arms, but to command the persons of the Subjects at pleasure.

To this We say, that both the grounds of this Objection are mistaken. For (as We have already shewed) neither is this Commission repealed by the Act of 4 & 5 P. & M. Nor is there any such unlimited Power given, or Bondage by it, as is pretended. And therefore Our Answer is, That it is no wonder that those Parliaments might repeal 4 & 5 P. & M. as too hard; and 17. E. 1. & 33 H. 8. as of no use: and put the *Militia* of this Kingdom again wholly under the powers of this Commission, (being so indifferent between both the other:) And indeed the *Militia* did after continue under Lieutenants, who had in effect the powers given by this Commission.

A. And now We shall return this Objection thus: (177) That those Parliaments of 1. Jac. and 21. Jac.

would have shewed little care of the safety and defence of the Kingdom to have repealed those Statutes which made provision for Arms, if they had thought there were no Law or Power left in the King to charge men with Arms for defence

of

of the Kingdom, (as the Declaration affirms the Law now to be.)

But whosoever considers that at that time, and long before, the power of imposing arms, was put in execution by Lieutenants, and Deputy-Lieutenants, by authority of their Commissions (which to this purpose are the same with Our Commissions of Array) and that this power was not complained of in those Parliaments, must conclude it more then probable, that those Parliaments did then conceive there was a sufficient power remaining in the King to impose Arms,

The next Objection, is from the opinion of the Parliament of 4. and 5. *Philip & Mary*, 1. 3. That if Our Commission had been authorized by Act of Parliament, that Statute of *Ph. & Mar.* had been to little purpose, whereby the penalty of Imprisonment for ten dayes, or forty shillings is imposed upon such, as do not appear at Musters, being Summoned thereunto by the Kings Commissioners authorized for that purpose. Intimating, as that the Act of *Ph. & Mar.* would never have been made, if they had then conceived, that We had power to grant such Commissions.

To this We answer, That the particular Arms and proportions of Arms, were then before appointed by the Statute of 4. and 5. Ph. & Mar. Cap. 2. under certain penakies upon those who should be defective, and so a great part of the care of the Commissioners of Array was supplied by the provision of that Statute; and the Commissions of Array being not so proper, but in time of Danger, and of a larger extent; then the power of mustering, a Commission of Muster (which is part of the power of a Commission of Array) would then serve the ordinary turn: and for every ordinary default, but at a Muster, in a time of no Danger, the punishment by 4. and 5. Ph. & Mar. Cap. 3. was great enough.

And for return of this Objection, We say, (as We observed before) That this Statute gives no new power, to grant Commissions for Musters, but admits the power to grant such Commissions to have been in the King before that time. And whereas the Statute of 12. E. 1. appoints no other Officers but the Constables for view of arms, it appears by these Statutes of *Phil.* and *Mar.* that the King might appoint His Commissioners: which he could not, if this power of Arms

had been wholly grounded upon that Spanne.
 The Last Objection of this nature, is ground-
 ed upon the Common opinion or practice;
 And is this.

That the Commissions of Lieutenancy, so
 grievous to the people, and declared illegall in
 Parliament, had not been so often issued, and so
 much pressed upon them, if the Commission of
 Array, not much differing from it in power, and
 not at all lesse grievous to the Subject, might, by
 the warrant and authority of the Lawes of this
 Realm, have supplied their room.

To this Our Answer is, That it stands upon
 two grounds: First, That the Commissions of
 Lieutenancy were grievous, Secondly, That they
 were illegall: both which so far forth at least as
 to the powers wherein they did not exceed the
 power of this Commission (for the other pow-
 ers are not now in question) are cleerly mistaken.

For, as for the grievousnesse, we say these
 Commissions were such as had been long used
 in the happiest times of Our Predecessors, and
 continued to Our Time: And such grievances,
 as did, or might arise in the execution of these
 Commissions, not warranted by them, are no
 cause

cause to quarrell at the Commissions themselves, more then at the Commissions of Peace, because some Justices of Peace have exceeded or abused their authority. And howsoever, Those powers wherein they exceeded not Our Commission of Array could nor be grievous, as we have already shewed.

And as for the illegality of those powers, We shall not, nor will Our people be satisfied by bare Votes, that they are illegall, The same being done without hearing of Our Councill, and without advising with the Iudges and demanding their opinions, (a course which was formerly used in Parliaments, as appears even by this Record of y. 4. amongst many others, but in matters of Law which have of late risen in Our Houses of Parliament, hath (for what cause We know not) been laid aside.) But We again say, these powers in Our Commissions of Lieutenancies are legall, and if there be any clauses in such Commissions which are illegall, those clauses could not at all make the Commissions void for so much as was legall, much lesse take away Our power of granting new Commissions, omitting such clauses. But if We should, for this time, admit the grounds

grounds of this Objection, That Our Commissions of Lieutenancy had been such as this Declaration would have them, yet it is but a very inconsequent Argument, That those Commissions would not have issued, so often, and been so much pressed, if the Commissions of Array had been Legall.

For the Commissions of Lieutenancy conteyned not only most of the powers of the Commission of Array, but in many things exceeded them, and were issuable in times of Peace, whereas Commissions of Array commonly issued in times of Danger only; and so there was occasion for the one Commission, when there was none for the other.

But on the contrary, (that we may retort this Objection also,) since that the Commissions of Lieutenancy, not much differing from the Commissions of Array in Power, (as the Declaration saith) and in many things exceeding them, have so often issued in the reignes of severall of Our Predecessors, & were allowed by the Judges of those times, obeyed without dispute, and not questioned in the Parliament of 1. *Iac.* or 21. *Iac.* nor were these powers wherein they agreed

N

with

with the Commission of Array complained of by the Petition of Right, but rather admitted and allowed, as We have already shewed. It may very well be inferred that both the Commissions of Lieutenancy and of Array, (as to those powers at least wherein they agreed) were Legall and far from being any grievance to the Subject.

Thus far we have proceeded in the Examination, and clearing of the Objections made against Our Commissions of Array. Upon all which Objections, we shall further observe That although the Declaration denies Our power at this day of commanding to *Train or Exercise*; yet none of those objections touch any thing upon those Powers. So that if all were true which is objected, yet we should still have power (at least by a distinct Commission) to command Our Subjects to be Disciplined, Mustered, Trained and Exercised, with such Arms as they had in a readinesse, for that (as we have shewed before) these are distinct from the power of *Imposing of Arms*, and may be severally granted or executed.

And now upon the whole matter, the state of Our case is this. It is Voted by Our Houses

ses of Parliament, That Our Kingdom is in imminent danger of destruction from enemies abroad, and a discontented Party at home; and that there is a necessity to put Our people into a posture of Defence.

In this case, for defence of Our selves and Our Kingdom, We have awarded Our Commissions of Array, thereby giving power to the Commissioners (persons, We hope, beyond exception) to cause Our Subjects to arm themselves, or, if impotent in body, to find arms for others, according to their abilities, in a reasonable and moderate proportion, and to muster and train them at convenient times and places, and afterwards, upon occasion to lead them, where there is a necessity for the defence of the Kingdom, and the Expulsion, vanquishing, and Destruction of Enemies.

And We have shewed, That the Powers of these Commissions, are grounded upon the very principles of government, and that without them, We could not defend and protect Our Subjects, (as We are bound by Our oath at Our Coronation) That they are warranted by the Ancient Common Law, allowed by the constant

practice of former ages established by the Parliament of 5. H. 4. (which caused a Copy of these Commissions to be entred upon the Roll, as a Rule or President for after times.) and are not repealed, or altered by any Statutes now in force.

And yet, though this Danger, and the necessity of putting the Kingdom into a Posture of Defence, is thus agreed by both Houses; neverthelesse, this Commission, and all others of like nature, are by their Declaration said to be illegall; And it is thereby denied, That We have, at any time, Power to charge Our Subjects with any manner of Arms (though for the absolute necessary defence of the Kingdom) or that We can command them to be trained or exercised, much lesse to be led out of the Countrey, though an Enemy be ready to enter, or though Rebels be actually up in Arms.

How farre this opinion is consistent with Law, Reason, or Regall Power, the safety of Our Selves and Our Subjects, (upon all this which We have said) We leave to all Our good people to consider.

And since Our two Houses (denying Us
this

this Power) without Us, and against Our consent, have made Orders (which they call Ordinances) for compelling Our Subjects to be Armed, Trained, Exercised, Mustered, and conducted, and send for Our Subjects as Delinquents, and imprison them, for refusing to obey such Orders; It is apparent, That what this Declaration saith against Our Commisison, without just ground, is true indeed of those Orders, that is, That they are contrary to the Law and Customs of the Realm, destructive to the Liberty, and Property of the Subjects, and contrary to the Petition of Right (as it is expounded in this Declaration,) as also against other Statutes.

F I N I S.
